

1 to conduct teaching remotely because she suffers from recurrent maxillary
2 sinusitis, allergies, and chronic asthma.

3 2. Plaintiff applied for a position to teach at DPSCD's new Detroit Virtual
4 School (DVS) Program, giving doctor's certification that she should work
5 from home due to her medical conditions. EXHIBIT G. On August 31,
6 DPSCD denied her application, even though DPSCD is under an agreement
7 to give preference to individuals who should work from home for medical
8 reasons, and even though the DVS Program continues to have vacancies for
9 math and science teachers. EXHIBIT C.

10 3. Then Plaintiff requested that DPSCD provide her with accommodations
11 under the Americans with Disabilities Act (ADA) to teach remotely from
12 home, again providing a doctor's certification. EXHIBITS H, I.

13 4. On September 9 or 10, DPSCD informed her that she would be terminated if
14 she did not report to work or obtain yet another doctor's certification to
15 obtain leave under the Family and Medical Leave Act (FMLA). EXHIBIT J.

16 5. On September 13, Ms. Conaway asked DPSCD to grant her leave under the
17 FMLA, and she provided a doctor's certification that she has allergies and
18 asthma. Asthma is explicitly recognized under the Family Medical Leave
19 Act (FMLA) as a qualifying serious medical condition that merits leave. 29
20 C.F.R. §825.115(c)(3) 825.114(a)(2)(iii).

1 taught at Communication and Media Arts High School (CMA) since the 2018-19
2 school year. She regularly obtains excellent teaching evaluations.

3 8. Plaintiff has medical diagnoses of asthma, chronic allergies and rhinitis, and
4 suffers frequent respiratory infections. EXHIBITS G, I, O. She has had episodes of
5 respiratory distress that have resulted in going to the emergency room.

6 9. She is an outspoken leader in the Detroit teacher's union and the city of
7 Detroit and has criticized plans by DPSCD to reopen for in-person learning
8 prematurely, which unnecessarily spreads COVID-19 among teachers, staff,
9 students and their families. DPSCD's premature reopening in Fall 2020 led to a
10 new spike of infections that resulted in schools re-closing in November 2020.
11 Now, DPSCD is again pursuing a premature reopening policy as the Delta variant
12 spreads in Detroit.

13 10. Plaintiff has been a regular speaker at DPSCD school board meetings and
14 has attended dozens of public rallies and pickets, and she has spoken to local print
15 and television news media. In Summer 2020, she engaged in a public back-and-
16 forth argument with DPSCD Superintendent Dr. Nikolai Vitti on Twitter about
17 DPSCD's premature school reopening plan.

18 11. Plaintiff has been an active representative and advocate for teachers and staff
19 at CMA, where she is the elected Building Representative of the teacher's union,
20 Detroit Federation of Teachers (DFT). In August 2021, Conaway represented the

1 get vaccinated due to a disability (covered by the ADA), has a disability that
2 affects their ability to have a full immune response to vaccination, or has a
3 sincerely held religious belief or practice (covered by Title VII of the Civil Rights
4 Act of 1964) may be entitled to a reasonable accommodation that does not pose an
5 undue hardship on the operation of the employer's business. Additionally, school
6 employers should advise workers with weakened immune systems about the
7 importance of talking to their healthcare professional about the need for continued
8 personal protective measures after vaccination." Plaintiff is seeking the advice of
9 her healthcare professionals, and DPSCD is violating CDC guidelines and ADA
10 law.

11 42. Plaintiff's request for ADA accommodation is reasonable. She continues to
12 be able to perform all the essential functions, including providing instruction,
13 recording student attendance, assessing students, maintaining a gradebook,
14 conducting parent-teacher conferences, and attending staff meetings and
15 professional developments while working online. Since her school closed to the
16 pandemic on March 13, 2020 and through the end of 2020-21 school year, she has
17 taught remotely, and she has done so highly effectively. DPSCD evaluated her as
18 "Highly Effective," DPSCD's highest rating, for the 2020-21 school year.

19 43. DPSCD can accommodate Plaintiff's request: Teachers at the DVS Program
20 are allowed to teach from home three days per week. EXHIBIT Q.

1 44. Plaintiff received an email from September 13 from the District stating that
2 they have received Plaintiff's accommodation request, and that they would be
3 calling the Plaintiff to discuss it. EXHIBIT L. However, the District never
4 contacted Plaintiff for this matter. To date, the District has ignored Plaintiff's
5 request and has proceeded to threaten her with termination for not reporting to
6 work in-person. EXHIBIT S.

7 45. DPSCD can make no claim of undue hardship if it were to grant Plaintiff's
8 request for accommodation, as enrollment in the DVS Program is overwhelming
9 current staffing resources.

10 **COUNT ONE**
11 **VIOLATION OF THE FAMILY MEDICAL LEAVE ACT (FMLA)**

12 46. Plaintiff incorporates by reference the allegations of the preceding
13 paragraphs.

14 47. Defendant is a covered employer under the FMLA, 29 U.S.C. 26 §
15 2611(4)(A). At all times herein relevant, Plaintiff is an eligible employee with a
16 serious health condition under 29 U.S.C. § 2611(2)(A), and 29 U.S.C. §
17 2612(a)(1).

18 48. The FMLA makes it unlawful for an employer to discriminate against or
19 retaliate against an employee who exercises his or her right to leave. 29 U.S.C. §
20 2615(a)(1) ("It shall be unlawful for any employer to interfere with, restrain, or

PRAYER

WHEREFORE, Plaintiff respectfully requests the following relief against

Defendant:

1. A temporary restraining order and preliminary injunction enjoining Defendant to grant Plaintiff's request for leave under the Family and Medical Leave Act (FMLA);
2. A temporary restraining order and preliminary injunction requiring Defendant to permit Plaintiff to teach remotely for the duration of the pandemic and otherwise requiring Defendant to discontinue its discriminatory practices;
3. Declaratory relief that Defendant's rejection of Plaintiff's request for the accommodation of remote teaching violates the Americans with Disabilities Act (ADA);
4. Compensatory damages and punitive damages for mental anguish and pain and suffering caused by Defendant's actions.
5. Reasonable attorneys' fees, together with litigation expenses and costs of suit.
6. Such other relief as the Court deems appropriate.

By Plaintiff's Attorneys,

1 UNITED FOR EQUALITY AND
2 AFFIRMATIVE ACTION LEGAL DEFENSE
3 FUND (UEAALDF)

4 BY: /s/ Shanta Driver

5 Date: September 24, 2021
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20